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Before the **DOCKET FILE COPY ORIGINAL**
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 10 1998

In the Matter of)
)
Advanced Television Systems and Their) MM Docket No. 87-268
Impact upon the Existing Television)
Broadcast Service)

To: The Commission

**COMMENTS ON PETITION
FOR RECONSIDERATION OF
FOX BROADCASTING COMPANY**

Sinclair Broadcast Group ("Sinclair") hereby supports certain parts of the Fox Broadcasting Company's ("Fox") Petition for Reconsideration and Emergency Request for Clarification^{1/} of the Commission's *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*^{2/} ("Recon Order") in the above-captioned proceeding. Sinclair appreciates the Commission's efforts in the *Recon Order* to alleviate the unfair competitive disparity between analog UHF stations operating on the UHF digital band ("UHF/UHF" stations) and analog VHF stations relocating to the UHF digital band ("VHF/UHF stations"). At the same time, Sinclair agrees with Fox that the Commission's 200 kW power limit on UHF/UHF stations imposes an unfair burden on these broadcasters, and that the Commission should eliminate this limit now or at least clarify when during the DTV transition period this limit will be lifted.

^{1/} Petition for Reconsideration and Emergency Request for Clarification, Fox Broadcasting Company (April 20, 1998) ("Petition").

^{2/} FCC 98-24 (February 23, 1998).

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Background

Sinclair, a publicly-traded company with thousands of shareholders and a multi-billion dollar market capitalization, is one of the nation's largest group television owners. At present, Sinclair owns and operates 24 television stations, and has applications pending to acquire 15 additional stations. Sinclair also provides programming services to 13 other television stations pursuant to time brokerage agreements.

In the past year, Sinclair has taken an active role in the Commission's DTV proceeding. In its June 1997 Petition for Reconsideration of the Commission's *Sixth Report and Order*,^{2/} Sinclair argued that UHF/UHF broadcasters were allotted power levels that would leave them unable to adequately serve their core business areas, where most of their viewers are located and where they generate most of their revenue.^{3/} As a result, Sinclair argued, UHF/UHF stations would suffer a serious competitive disadvantage relative to their VHF/UHF counterparts.

The Commission's *Recon Order* did much to alleviate Sinclair's competitive concerns, modifying the applicable interference standard and thereby making it easier for UHF/UHF broadcasters to increase their DTV power levels and provide adequate service to these core business areas. Specifically, under the *Recon Order*, these UHF/UHF stations can increase power or make any other modification that would result in less than a 2 percent increase in interference to the population served by another station. *Recon Order* at para. 79. At the same time, the Commission ruled that UHF/UHF stations could increase their power level only up to

^{2/} Sixth Report and Order, 12 FCC Rcd 14588 (1997) ("*Sixth Report and Order*").

^{3/} Petition for Reconsideration, Sinclair Broadcast Group, Inc. (June 13, 1997).

200 kW;^{4/} the Commission explained that this limit would put all licensees and permittees on a more equal footing and will give the Commission flexibility to accommodate other facilities changes that will be essential to some applicants. *Id.* at para. 80. The Commission did not provide a specific date for the lifting of the 200 kW power cap, indicating only that it will remain in place until "substantial progress has been made in the rollout of DTV service." *Id.* In addition, the Commission did provide in the *Recon Order* that UHF/UHF stations may use beam tilting techniques to increase power above 200 kW within their NTSC Grade A contours, representing their core service areas. *Id.* at para. 81.

The Commission's 200 kW power limit is the subject of Fox's Petition. Fox claims that broadcasters were not provided with any opportunity to comment on this proposal, and that implementation of this policy will delay the rollout of DTV, impose an unfair burden on those large market stations required to construct DTV facilities by 1999, and affect the ability of UHF stations to compete with their NTSC VHF competitors. Fox contends that the Commission should eliminate its 200 kW power cap and permit UHF stations to immediately maximize their DTV facilities to the one megawatt power level, as long as such request is *bona fide* and is consistent with the Commission's new interference standard.

Discussion

I. Sinclair Agrees that the Commission's Power Limit Imposes an Unfair Burden on UHF/UHF Stations

As stated above, Sinclair appreciates the steps taken by the Commission in the *Recon Order* to alleviate the competitive disparity between UHF/UHF stations and their VHF/UHF counterparts. Sinclair shares some of Fox's concerns, however, with the Commission's 200 kW

^{4/} VHF/UHF stations are subject to a power limit of one megawatt. *Sixth Report and Order* at para. 30.

power limit. In particular, Sinclair agrees with Fox that this power cap imposes an unfair burden on those UHF/UHF stations required to construct their DTV facilities by 1999.^{5/} Sinclair owns four UHF stations subject to this accelerated construction requirement,^{6/} and the UHF/UHF power cap will force Sinclair to pursue either of two unattractive business strategies in these markets. First, Sinclair could opt to purchase and install equipment designed for broadcast operations at 200 kW, requiring an investment of approximately \$1,150,000.^{7/} If the Commission subsequently lifted the UHF/UHF power cap, however, Sinclair would have to replace this equipment -- assuming competitive pressures require it to maximize these stations' power -- as its just-purchased equipment would not be suitable for operations at one megawatt. Sinclair would be unfairly harmed by the waste of this substantial initial investment.

Alternatively, Sinclair could install equipment immediately capable of delivering a one megawatt signal. This strategy would be risky, however, as there is no guarantee that the Commission will not permanently retain its 200 kW UHF/UHF limit. Were the Commission to maintain its current policy, Sinclair will have wasted several hundred thousand dollars, given the

^{5/} Under the *Fifth Report and Order* in this proceeding, network stations in the top 10 markets are required to complete DTV construction by May 1, 1999, and network affiliates in the top 30 markets must complete DTV construction by November 1, 1999. *Fifth Report and Order*, 12 FCC Rcd 12809, para. 76 (1997) ("*Fifth Report and Order*").

^{6/} The following four stations must construct DTV facilities by November 1, 1999: KDNL-TV, St. Louis, Missouri; WBFF(TV), Baltimore, Maryland; WLFL(TV), Raleigh/Durham, North Carolina; and WPGH-TV, Pittsburgh, Pennsylvania.

^{7/} In its Petition, Fox describes the costs associated with 200 kW and one megawatt DTV facilities. Petition at 9-10. The costs for a 200 kW station are substantial. As Fox indicates in its Petition, a solid state transmitter for a 200 kW DTV facility will cost approximately \$750,000. A six-inch coaxial transmission line for the 200 kW facility will cost approximately \$200,000, and the required DTV antenna will cost approximately \$200,000. The useful life of this equipment would likely be fifteen to twenty years.

greater cost of the equipment required for one megawatt operations.^{8/} In addition, even if the Commission did subsequently lift its power limit, Sinclair will have been forced to operate its one megawatt equipment at 200 kW for some indefinite period; during that stretch, Sinclair will have been disadvantaged by artificially high capital costs.

Moreover, the Commission's 200 kW power limit might raise similar issues even for stations not subject to the Commission's accelerated construction requirement. In those markets, competitive forces might drive Sinclair and others to construct DTV facilities well in advance of the generally applicable construction deadline of May 1, 2002. Assuming the 200 kW power cap is still in place early in the transition period, such broadcasters would also face the dilemma described above.

II. The Commission Should Eliminate the UHF Power Limit Now, or, At the Least, Indicate When This Limit Will be Lifted

Sinclair agrees with Fox that the Commission has not sufficiently justified its imposition of the 200 kW limit on UHF/UHF stations, and that in the absence of any adequate rationale for this policy, the Commission should eliminate this cap and permit these stations to maximize their signals up to the generally applicable one megawatt power limit. Sinclair further agrees with Fox that the *de minimis* interference standard provides ample protection to any stations electing to defer construction until later in the DTV transition period, and also supports Fox's suggested procedures for ensuring that only *bona fide* maximization requests receive consideration from the

^{8/} The transmitter required for operations at one megawatt costs between \$900,000 to \$1.2 million, several hundred thousand dollars more than the transmitter required for the lower power operation. In addition, instead of coaxial transmission line, stations would have to use waveguide transmission line, which would not cost more but would also result in substantially more wind-loading. This additional wind-loading could require construction of a new tower to accommodate the transmission line. Petition at 10.

Commission.^{9/}

If the Commission decides that the 200 kW power limit for UHF/UHF stations should remain in place at this time, it should at least establish with absolute certainty that this cap will be lifted at some point during the transition, and provide a clear deadline for the cap's elimination. Such action would resolve some of the issues described above and help UHF/UHF stations develop their business plans for the transition to the digital environment.

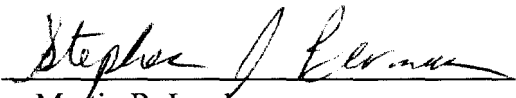
Conclusion

For the aforementioned reasons, Sinclair respectfully urges the Commission to take the action recommended above.

Respectfully submitted,

SINCLAIR BROADCAST GROUP, INC.

FISHER WAYLAND COOPER
LEADER & ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

By: 
Martin R. Leader
Stephen J. Berman

Its Attorneys


Dated: May 13, 1998

^{9/} Sinclair agrees with Fox that all applicants should be required to (i) file comprehensive engineering statements to demonstrate compliance with the *de minimis* standard, (ii) adhere to the Commission's standard DTV construction timetable, and (iii) certify their intention to construct and operate according to the specifications in their applications in the event of a grant.

CERTIFICATE OF SERVICE

I, Elinor W. McCormick , a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 13th day of May 1998, I served a true copy of the foregoing **"COMMENTS ON PETITION FOR RECONSIDERATION OF FOX BROADCASTING COMPANY"** by first class United States Mail, postage prepaid, upon the following:

William S. Reyner, Jr.
Mace J. Rosenstein
Jacqueline P. Cleary
HOGAN & HARTSON L.L.P.
555 13th Street, N.W.
Washington, DC 20004


Elinor W. McCormick